



## Administrative Conference of the United States

# Guide for Members

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This Guide provides information for members of the Administrative Conference of the United States. The Guide should assist members in understanding:

- The Administrative Conference, its mission, structure and activities
- The roles and responsibilities of members
- The plenary session of the Administrative Conference

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## I. About the Administrative Conference

The Administrative Conference of the United States is an independent agency within the Executive Branch of the United States government. It was created by statute in 1964, 5 U.S.C. §§ 591 et seq., and is not part of any other government agency. Its membership is drawn from other federal agencies and from private-sector persons with expertise and experience in law and government.

The Conference’s mission is to study administrative procedures in federal programs and recommend improvements. As President Obama stated on July 8, 2010, the Conference is “a public-private partnership designed to make government work better.” It accomplishes this mission by conducting research, formulating recommendations, spreading agency best practices, promoting information exchange, and sponsoring events and publications. Over the first 30 years of its existence, the Conference issued approximately 200 recommendations, most of which were implemented in whole or in part. The Conference lost its funding in 1995 and ceased operations, but it was revived in 2010 and continues to be fully functioning.

The Conference’s research and recommendations cover both general administrative law topics that cut across many federal agencies and specific ways in which particular agencies can improve particular procedures. The Conference has inspired federal legislation, changes to federal agency rules and practices, and changes to presidential practices. It has also influenced judicial decisions. A complete set of the Conference’s recommendations is available on its website at [www.acus.gov](http://www.acus.gov).

In observance of the 50th anniversary of passage of the Administrative Conference Act, a special double edition of the *George Washington Law Review* was devoted to the Administrative Conference, which included a comprehensive Historical Supplement, 83 *Geo. Wash. L. Rev.* 1705 (2015). The Historical Supplement contains an overview of the history of the Conference, together with bibliographic material, a subject index, and a listing of all recommendations and statements adopted by the Conference. All of these items are accessible on the Conference’s website at [www.acus.gov](http://www.acus.gov).

## **A. Structure of the Administrative Conference**

The Administrative Conference consists of 101 voting members, as delineated by statute, together with a small, full-time staff. The Conference's bylaws provide for three categories of non-voting members, described below.

### **1. The Chairman**

The Chairman of the Administrative Conference is appointed by the President, by and with the advice and consent of the Senate. The Chairman is the only full-time member of the Conference. The Chairman serves a five-year term.

The Chairman provides overall management and direction for the Conference. He controls the Conference's day-to-day operations. He directs the activities of the Conference's full-time staff. He chairs the plenary meetings of the full Conference membership and the meetings of the Council of the Administrative Conference.

### **2. The Council**

The Council of the Administrative Conference functions as the Conference's board of directors. The Council consists of the Chairman plus ten additional members appointed by the President for three-year terms. Up to five of the Council members are current, senior officials at other government agencies, and the others are drawn from outside the federal government. One of the Council members is designated by the President as the Vice Chairman.

The powers and duties of the Council include:

- Determining the time, place, and agenda for plenary sessions of the Conference
- Approving topics for study by the Conference
- Approving the selection of public members of the Conference
- Approving the Conference's budget proposals
- Receiving the reports and recommendations of Conference committees and transmitting them to the full Conference membership with the views of the Council.

### **3. The Assembly**

The Assembly is the name given to the 101 statutory voting members of the Conference meeting in plenary session. The 101 members include the Chairman, the Council, government members and public members. The Conference's bylaws permit other types of members who are not part of the Assembly. These additional members are described below under "Non-Voting Members."

#### ***a) Government Members***

The government members of the Conference are current, senior officials at other government agencies. The Conference's organic act, 5 U.S.C. §§ 591 et seq., designates certain

federal agencies to have members of the Conference, and it authorizes the President and the Council to designate additional agencies.

The government members are appointed by their agencies and serve no fixed term. They participate in Conference activities in addition to their full-time work at their own agencies.

#### ***b) Public Members***

The public members of the Conference are drawn from the general public. They are typically leading authorities in administrative law, public administration, or other areas of interest to the Conference. Most public members are lawyers, but some are experts in other disciplines. The public members come primarily from academia, law firms, and public interest organizations.

Public members are appointed by the Chairman with the approval of the Council. They serve two-year terms, with the terms of half of the public members ending on June 30 of each year. Public members may be reappointed and may serve a total of three consecutive two-year terms.

### **4. Non-Voting Members**

There are three additional categories of participants who have all the privileges of Conference members, except that they may not vote or make motions in plenary sessions of the Conference. They may vote in committee meetings only at the discretion of the committee chair. These additional participants include:

#### ***a) Senior Fellows***

Senior fellows are appointed by the Chairman with the approval of the Council. Eligibility is limited to former Chairmen of the Conference, persons who have served for six or more years as government or public members of, or liaison representatives to, the Conference, and former members who have also served as members of the federal judiciary. Senior fellows serve for two-year terms and may be reappointed.

#### ***b) Liaison Representatives***

The Chairman, with the approval of the Council, may designate federal agencies or other organizations that do not have voting members of the Conference to have a liaison representative. Agencies or organizations so designated appoint their liaison representative. Liaison representatives serve no fixed term.

#### ***c) Special Counsels***

Special Counsels may be appointed by the Chairman, with the approval of the Council. They advise and assist the membership in the areas of their special expertise. They serve for 2-year terms and may be reappointed.

## 5. The Staff

The Conference has a small, full-time, career staff who serve under the Chairman. The staff conducts research, supports the work of Conference committees, organizes Conference events, works to implement Conference recommendations, provides information to Conference members and to the public, and otherwise carries forward the work of the Conference. Senior members of the staff include the Executive Director, who oversees operations and strategy for the Conference; the General Counsel, who ensures the Conference's compliance with legal requirements; and the Research Chief, who oversees the Conference's research program.

### B. Conference Committees

The Conference's standing committees are the most important component of the process that leads to the adoption of Conference recommendations, because it is at the committee level that researchers' reports are carefully analyzed and proposed recommendations are formulated. Although Conference researchers often provide the initial draft of proposed recommendations, the committees ultimately develop the recommendations that are considered by the Assembly. The committees typically meet several times each year, depending on the stage that their assigned projects have reached. Each Conference member (whether voting or non-voting) is asked to participate actively in at least one of the committees.

Each committee has an area of interest and activity, which ordinarily guides the assignment of particular projects among the committees. However, these areas are defined broadly, to allow the Chairman flexibility in assigning projects. The Chairman may also, with Council approval, appoint special committees as needed.

The **Committee on Adjudication** examines procedural issues relating to how agencies handle cases that come before them, including issues arising in programs that handle very large caseloads.

The **Committee on Administration and Management** considers issues that affect the efficiency and fairness of agencies' operations, including their structure, accountability, and management of personnel, records, and other resources.

The **Committee on Judicial Review** addresses statutory and case law concerning court review of administrative actions. It also may examine those aspects of administrative procedure that affect the effectiveness or availability of judicial review.

The **Committee on Regulation** studies procedures applicable to the control of private economic activity, including ways to reduce costs and increase effectiveness of agency programs.

The **Committee on Rulemaking** considers the procedures that agencies use to promulgate, modify or rescind regulations.

### C. Activities of the Administrative Conference

The Conference conducts several different kinds of activities.

## **1. Research and Recommendations**

One of the chief activities of the Administrative Conference is making formal recommendations. The Conference conducts an extensive research program under the direction of the Chairman and the Council, and the results of the research are embodied in Conference recommendations for improving administrative procedure. Depending on the topic, recommendations may be directed to Congress, the President, agencies, or the courts. All Conference recommendations must be approved by vote of the full Conference membership meeting in plenary session.

## **2. Implementation and Advisory Services**

The Conference's recommendations are advisory only, as the Conference does not have the power to compel anyone to follow its recommendations. The Conference therefore undertakes activities designed to promote the implementation of its recommendations, such as testifying before Congress, providing comments in agency rulemakings, informing agencies of its recommendations, and developing and providing training programs for agencies and others interested in implementing the Conference's recommendations.

## **3. Events and Publications**

The Conference sponsors events on topics of interest to administrative agencies. These events promote information exchange and the spread of agency best practices. The Conference has also published numerous guides on administrative law topics such as rulemaking, alternative dispute resolution, negotiated rulemaking, and general administrative law statutes. An extensive bibliography of Conference publications, reports, and other documents is available on its website at [www.acus.gov](http://www.acus.gov).

## **4. Foreign Assistance**

The Conference is authorized by statute to provide assistance in improving the administrative procedures of foreign countries. Such assistance must be provided on a reimbursable basis and with the concurrence of the Department of State or the Agency for International Development.

## **D. How the Conference Makes Recommendations**

The Conference activity in which the members are most involved is the making of formal recommendations. Members participate in formulating recommendations through their work on Conference committees; they also vote on recommendations at the Conference's plenary sessions. The typical process by which the Conference develops and approves a recommendation is as follows:

### **1. Gather Ideas**

The Conference gathers project ideas from many sources, which include Congress, other federal agencies, public interest or other organizations, members of the Conference, academics and other experts, and members of the public. The Conference staff also develops project ideas.

## **2. Select Ideas**

The Chairman, with the advice of the staff, selects the best project ideas received. The criteria for selecting research projects include the likelihood of a proposed study leading to practical recommendations for improving procedures.

## **3. Council Approval of Projects**

The Chairman requests approval from the Council for projects that are intended to lead to Conference recommendations.

## **4. Picking a Researcher**

For each selected project topic, the Conference typically engages an expert consultant to do research and prepare a report and proposed recommendations on the topic. Some research projects are done by the Conference staff. In other cases, the Conference might use a report already prepared by a respected outside researcher or organization.

## **5. Committee Consideration**

The researcher's report is assigned to one of the Conference's standing committees. The committee's responsibility is to review the report and to try to reach consensus on a recommendation on the subject, which the committee believes should be proposed to the full Conference membership for debate and approval. It is at this point in the recommendation process that the individual Conference members who are on the committee are expected to perform their key role of participating in the development of the committee's proposal. Although the researcher's proposed recommendations are often used as a starting point, it is ultimately the committee, with the assistance of the Conference staff, which is responsible for the proposed recommendation.

Depending on the topic, a Conference recommendation may be directed to Congress advising some legislative action; it may recommend that agencies change their practices or procedures; it may recommend an Executive Order or a change in presidential practices; it may be directed to the Judicial Conference of the United States; or it may recommend some combination of these actions. In all cases, Conference recommendations are limited to procedural matters, including agency organization or management, and do not address substantive issues.

## **6. Council Consideration of Recommendations**

The committee's proposed recommendation is received and considered by the Council of the Conference, under its responsibility to set the agenda for plenary sessions. The Council may add its own views when it transmits the recommendation to the full Conference membership.

## **7. Consideration by the Assembly**

The full membership of the Administrative Conference ordinarily meets in plenary session twice each year to consider and debate the recommendations proposed by Conference committees.

If approved by vote of the full membership, a recommendation becomes an official recommendation of the Administrative Conference.

## **8. Implementation**

The Administrative Conference has no power to compel anyone to follow its recommendations. Accordingly, it relies on the power of persuasion to convince those to whom its recommendations are directed to follow the recommendations. Conference members and staff participate, as appropriate, in bringing Conference recommendations to the attention of the federal entities to which they are addressed and to assist in implementation. Although the Conference has no formal power, historically it has had considerable influence and most of its recommendations have been followed in whole or in part.

## **II. The Role and Responsibilities of Members**

### **A. The Role of Members**

With the exception of the Chairman, all members of the Administrative Conference serve the Conference in a part-time capacity. Most members have full-time jobs at other government agencies or at private firms or organizations. The bylaws of the Administrative Conference provide that “[e]ach member is expected to participate in all respects according to his or her own views and not necessarily as a representative of any agency or other group or organization, public or private.”

### **B. Responsibilities of Members**

The chief responsibilities of members of the Administrative Conference are serving actively on a Conference committee and attending the plenary sessions of the Conference.

#### **1. Serving on a Conference Committee**

Each member of the Conference (except Council members) is assigned to a Conference committee. (Some members choose to request a second committee assignment.) As described above, the committees play an important role in the development of Conference recommendations. In their service on committees, members should apply their expertise to the recommendations that their committees are considering and work to improve the recommendations to the greatest possible extent.

#### **2. Attending the Plenary Sessions**

The full Conference membership ordinarily meets in plenary session twice each year, typically in June and December. Members will receive information about the business of each plenary session in advance of the meeting. Members should review the items that will be considered at the plenary session and give these items appropriate thought so that they can be prepared to engage in the discussion and then to vote on the proposed recommendations and any amendments that may be offered.



### **3. Serving Conscientiously; Use of Alternates**

The [bylaws](#) of the Conference state that “[e]ach member is expected to devote personal and conscientious attention to the work of the Conference and to attend plenary sessions and committee meetings regularly.” Thus, personal participation in Conference activities is established as the expected norm. However, the Conference also recognizes that members will sometimes have unavoidable conflicts that prevent them from attending Conference activities. For both committee meetings and plenary sessions, arrangements are usually made to enable remote participation by members.

The use of suitably informed alternates in meetings of Conference committees, while not encouraged, is permitted where circumstances justify. In such circumstances, alternates may participate in committee deliberations including the privilege of voting. Use of an alternate does not lessen the general obligation of regular personal attendance by the member.

The use of alternates is not permitted at plenary sessions of the Conference. However, inasmuch as the plenary sessions are open to the public, anyone, including someone representing an absent member, may attend.

### **4. Avoidance of Conflicts of Interests**

Section 302.5(b)(1) of the ACUS [bylaws](#) states: “It shall be the responsibility of each member to bring to the attention of the Chairman, in advance of participation in any matter involving the Conference and as promptly as practicable, any situation that may require disqualification under 18 U.S.C. § 208. Absent a duly authorized waiver of or exemption from the requirements of that provision of law, such member may not participate in any matter that requires disqualification.” Per section 302.5(c), this provision also applies to non-voting members of the Conference.

ACUS will provide publicly-available agendas prior to all committee meetings and plenary sessions. All members have an affirmative obligation to determine, prior to their participation, whether any financial conflicts of interest might exist based on the agenda items listed. Such conflicts are likely to be rare, given that ACUS, by law, primarily deals with procedural and not substantive matters (i.e., particular matters involving specific parties). Further guidance on federal ethics rules and standards related to SGEs who serve on committees subject to the Federal Advisory Committee Act may be found in the booklet “[To Serve With Honor](#),” available on the OGE website.

## **III. The Plenary Session**

The full Conference membership meets in plenary session at times and places determined by the Council. Plenary sessions typically occur twice a year, in June and December, in Washington, DC. There are several important details to understand about the conduct of the plenary session.

## **A. Public Access; Federal Advisory Committee Act**

The Assembly of the Conference is an “advisory committee” subject to the Federal Advisory Committee Act (FACA). Accordingly, the public must be given notice in the Federal Register of meetings of the Assembly, the meetings are open to the public, and documents provided to the Assembly are available to the public. In addition to permitting members of the public to attend the meeting in person, the Conference arranges to stream the plenary session live over the Internet, to have video of the plenary session available for viewing on the Internet after the session is over, and to post relevant documents on the Conference website. Conference members speaking at the plenary session should bear in mind that their remarks will be available to the public.

The FACA and its implementing regulations constitute an important element of maintaining an “open government.” Although the underlying policy is that the public should have access to all of the deliberations of advisory committees, including documentation, the regulations provide certain narrow exceptions to the Act’s procedural requirements, which permit two or more members of a committee to do administrative or other preparatory work for consideration by the full committee. This provision allows members to conduct research or analyze issues in advance of an open meeting of the committee, but it does not extend to any preliminary debate or communications by members designed or intended to advance or oppose particular provisions of recommendations or other matters that are on the agenda of the Assembly’s meetings.

## **B. Meeting Procedure**

The plenary session may be likened to the proceedings of a legislative body. Although it operates with less formality than a House of Congress, the session is conducted in accordance with Robert’s Rules of Order to the extent appropriate. An item requiring a vote of the membership is introduced by a motion. Members may debate the motion and may offer amendments. Debate concludes with a vote of the membership.

At the start of the plenary session, a “Resolution Governing the Order of Business” will be proposed. The proposed resolution, if adopted, will control the time allotted for agenda items and for individual remarks, and will provide that priority be given to amendments and substitutes submitted in writing to the Conference’s Office of the Chairman prior to the meeting. Therefore, members desiring to propose amendments to items on the plenary session agenda should consider submitting those amendments in writing prior to the meeting, in accordance with the deadline and instructions that accompany the distribution of plenary session materials prior to the meeting. Questions about meeting procedure may be directed to the General Counsel at [SMcGibbon@acus.gov](mailto:SMcGibbon@acus.gov).

## **C. Participation and Voting Rights**

The Chairman, the Council members, the government members, and the public members of the Conference may vote at the plenary session. Senior fellows, liaison representatives, and special counsels have the privilege of debate but may not vote or make a motion on the floor.

In unusual circumstances, the Conference's bylaws permit a person, who prior to the commencement of the meeting has obtained the approval of the Chairman, to speak with the unanimous consent of the Assembly.

#### **D.     Separate Statements**

A member who disagrees in whole or in part with a recommendation adopted by the Assembly is entitled to enter a separate statement in the record and have it set forth with the official publication of the recommendation. This procedure is rarely invoked, and a member's failure to file a separate statement does not imply that the member endorses the Conference's recommendation.

A member wishing to file a separate statement must notify the Executive Director of the Conference not later than the last day of the plenary session at which the recommendation is adopted, although a member may, without giving such notification, join in another member's separate statement for which timely notification was given. A member must file the separate statement within 10 days after the close of the session (but the Chairman may extend this deadline for good cause).